APPEAL NO. 040130
FILED MARCH 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 30, 2003. The hearing officer resolved the disputed issues by deciding: (1) that the appellant (claimant) did sustain an injury while in the course and scope of employment on _____; (2) that the claimant had disability from September 16 through September 19, 2003, and from October 6 through November 27, 2003; (3) that the claimant did not have disability from November 27, 2003, to the date of the CCH; and (4) that the compensable injury does not extend to and include the lumbar MRI findings of November 26, 2003. The claimant appealed, arguing that his disability did not end on November 26, 2003, and disputing the determination that the compensable injury does not extend to and include the lumbar MRI findings of November 26, 2003. The respondent (carrier) responded, urging affirmance of the disputed determinations. The findings that the claimant sustained a compensable injury on _____, and that the claimant had disability from September 16 through September 19, 2003, and from October 6 through November 26, 2003, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant attached a document to his appeal, which was not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. *See* Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The issues of the extent of the injury and disability were questions of fact for the hearing officer. Conflicting evidence was presented regarding the issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies

and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We have reviewed the challenged determinations. The hearing officer noted that the evidence was insufficient to establish that the claimant had an inability to work from November 27, 2003, to the date of the CCH. Additionally, the hearing officer found that the lumbar MRI revealed degenerative conditions and that the evidence was insufficient to establish that the claimant's preexisting condition was aggravated, worsened, or enhanced as a result of the injury sustained on _____. The hearing officer was not persuaded that the claimant met his burden of proof on the disputed issues. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge